

TITLE IV - PUBLIC RESOURCES AND CONSERVATION ORDINANCE

Chapter 6 Shellfish Management Ordinance

601 Authority

This Ordinance is enacted in accordance with 12 M.R.S.A. Sections 6671 and 6681.

602 Purpose

To establish a Shellfish Conservation Program for the Town of Ogunquit which will insure the protection and optimum utilization of shellfish resources within its geographical limits. These goals will be achieved by means, which may include:

- A. Licensing of shellfish harvesters (diggers);
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area which harvesting is permitted;
- D. Limiting the minimum size of clams taken; and
- E. Limiting the amount of clams taken daily by a harvester.

603 Shellfish Conservation Commission

The Shellfish Conservation Program for the Town of Ogunquit will be administered by the Shellfish Conservation Commission consisting of five (5) regular and two (2) alternate members to be appointed by the Selectmen for terms of three (3) years. The Commission's responsibilities include:

- A. Establishing annually, in conjunction with the Department of Marine Resources of the State of Maine, the number of shellfish digging licenses to be issued;
- B. Surveying the clam-flats to maintain current information on shellfish resources. Such surveys include:
 - a) Determination of size frequency of the shellfish,
 - b) Determination of growth,
 - c) Estimation of the standing crop of shellfish,
 - d) Collection of harvest data documenting local values of shellfish resources,
 - e) Estimation of potential yield of the flats,

- f) Identification of sources of pollution impacting shellfish populations and location of sources on charts,
 - g) Identification of other resource problems such as green crab predation on shellfish and competition from mussels,
 - h) Reseeding and transplanting to make fallow areas productive, and
 - i) Placing barriers to keep spat in the area.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation;
- D. Reviewing this Ordinance periodically and make recommendations for amendments on a timely basis;
- E. Securing and maintaining records of shellfish harvest from the Municipality's managed shellfish areas (and closed areas that are conditionally opened by the Department of Marine Resources);
- F. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Area Biologist of the Department of Marine Resources;
- G. Designing and promulgating a Shellfish Conservation Plan in Cooperation with the Department of Marine Resources based on the results of the clam flat survey, incorporating recommended levels of harvesting on the various flats (as shall be delineated on maps prepared by the Conservation Commission). Possible inclusions in such a plan are crop rotation, seed programs and predator control.
- H. Submitting an Annual Report to the Municipality and Department of Marine Resources detailing: all funds available, fund expenditures, harvest data, results of all experimental and conservation programs, enforcement activities and sources of pollution.

603.1 Fee Schedule

Submitting a recommended fee schedule to the Board of Selectmen on an annual basis for licenses, whereupon the Selectmen shall then have the authority to accept, reject or amend such fees, as they deem necessary.
(ATM 04/07/03)

604 Definitions

604. 1 **Municipality** means the Town of Ogunquit, Maine.

604.2 **Resident** means a person who has resided in the State of Maine for at least six (6) months next prior to the time his claims of such residence is made,

and who has resided in this municipality for at least three (3) months prior to the time his claims of such residence is made. "Resident" is extended to include non-resident property tax paying owners of real estate in this municipality.

604.3 Non-Resident means a resident of the State of Maine who is otherwise qualified as a resident under this Ordinance.

604.4 Shellfish/Clams means soft-shell clams ("Mya Arenaria").

604.5 Harvest means to dig, take, remove or otherwise harvest shellfish in the municipality.

604.6 Lot means the total number of clams in any bulk pile. Where clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

604.7 Possess means harvest, ship, transport, hold, buy and sell retail and wholesale clam shellstock.

604.8 Period of Issuance means the first ninety (90) days during which this municipality issues shellfish digging licenses each year.

605 Licensing

Municipal Shellfish Digging License is required. It is unlawful for any person to harvest shellfish in this Municipality without having a current license issued by this Municipality as provided by this Ordinance. It shall be lawful to harvest clams during the dates stated on the license. Actual digging is limited to daylight hours. It will be unlawful to dig from sunset to one-half hour before sunrise.

A licensee under the age of eight (8) must be accompanied by an adult licensee at least eighteen (18) years of age at all times when harvesting shellfish. (ATM 04/07/03)

605.a Type of License

605.a.1 Resident and Real Property Taxpayer Recreational Shellfish License

This license is available to residents and real property taxpayers only of this municipality and entitles the holder to harvest no more than one (1) peck of shellfish in any one (1) day for the use of himself and his family, from the shore, flats

or coastal waters of this municipality, when and where it is lawful to do so.

605.a.2 Non-Resident Recreational, Shellfish License

This license is available to any Maine resident who is not a resident of Ogunquit and entitles the holder to harvest not more than one (1) peck of shellfish in any one (1) day for the use of himself/herself and his/her family, from the shores, flats or coastal waters of Ogunquit when and where it is lawful to do so. (ATM 04/07/03)

605.a.3 Resident, Commercial Shellfish License - No license available.

605.a.4 Non-Resident, Commercial Shellfish License - No license available.

605.a.5 One-Time, Specific Date Permit - Will be available to anyone, any state within the five (5) working days prior to the selected dig date. (ATM 4/7/01) (BOS 10/18/05).

605.a.6 Ogunquit Shellfish Conservation Commission - Reserved Licenses - These licenses shall be issued to each member serving on the Commission less than one (1) year upon payment of stated fees. Those Commission members having served more than one (1) year and accumulating ten (10) or more hours of service time doing clam surveys, testing, or anything that benefits the Commission during the previous year shall be entitled to a free license. (ATM 4/7/01)

605.a.7 License Must Be Signed

The licensee must sign his or her license in order to validate it. Any person harvesting clams in this municipality shall have on his/her person and show to any Warden or Law Enforcement Officer positive identification, when requested, in addition to the license, where required.

605.b Application Procedure

Any person may apply to the Town Clerk for the license required by this Ordinance on forms provided by the municipality.

605.b.1 Contents of the Application

The application must be in the form on an affidavit and must contain the applicant's name; current address, birth date, height, weight, signature and other information the Municipality may require.

605.b.2 Misrepresentation

Any person who gives false information on a license application will cause said license to become invalid and void.

605.b.3 Records

The Clerk or designated officials of this municipality shall note on the application the date the license was issued, sign it and file the application with his or her records.

605.b.4 Notice

Notice of the number and the procedure for application shall be published in a trade or industry publication which the Municipal Officer's consider effective in reaching persons affected; not less than ten (10) days prior to the period of issuance and shall be posted in the Municipal Offices until the period concludes.

605.c Limitation of Diggers

Because the shellfish resources are limited and because a commercial or recreational digger can be expected to harvest a certain volume of clams per year, the number of licenses must be controlled. The number will vary from year to year depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization. The following procedures will be followed to exercise the control:

1. Prior to October 1 of each year, the Shellfish Conservation Commission with the approval of the Commissioner of Marine Resources will establish the number of licenses to be permitted.
2. The Shellfish Conservation Commission will notify the Town Clerk, in writing, prior to October 1 of each year the number of licenses to be issued.
3. During the period of issuance, the Town Clerk shall issue licenses to residents and non-residents as allocated for each year on or after

November 1 until January 29, after which the then remaining unsold licenses shall be issued on a first-come, first-served basis to residents and non-residents alike.

605.d Open License Sales

When the Shellfish Conservation Commission determines limiting shellfish licenses is not an appropriate shellfish management option for one or more license categories for the following year:

1) Notice of the dates, places, times and the procedures for the license sales shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than 10 days prior to the initial sale date and shall be posted in the municipal offices. A copy of the notice shall be provided to the Commissioner of Marine Resources.

2) For each commercial license category, the Town Clerk shall issue one license to nonresidents when six (6) licenses are issued to residents and one more to nonresidents will be issued for every ten (10) additional resident license issued. For each recreational license category, the Town Clerk shall issue one (1) license to a resident and one (1) to a nonresident; thereafter, one (1) nonresident license will be issued for every ten (10) additional resident license issued. **(BOS 10/18/05).**

605.e License Expiration Date

Each license issued under authority of this Ordinance expires at midnight on the 31st day of March.

606 Minimum Legal Size of Shellfish

It is unlawful to possess in this Municipality shellfish, which are less than two inches (2") in the longest diameter except that a licensee may possess shellfish that are less than two inches (2") if they comprise less than ten percent (10%) of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.

606.a Digger must use "clam digger's fork" or a tined fork with two-inch (2") separation of tines and with a handle no longer than two feet (2').

607 Opening and Closing of Flats

The Municipal Officers, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendation of the Shellfish Conservation Commission and concurrence of the Department of Marine Resources Area Biologist that the status of the shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Municipal Officers may call a public hearing on ten (10) days notice published in a newspaper having general circulation in the Municipality stating the time, place and subject matter of the hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Municipal Officers made after the hearing shall be based on findings of fact.

608 Penalty

A person who violates this Ordinance, in any way, shall be punished as provided by 12 M.R.S.A., Sections 6671 and 6681.

609 Effective Date

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective, and continue to be effective after its adoption by the Municipality provided a certified copy of this Ordinance is filed with the Commissioner within twenty (20) days of its adoption.

610 Separability

If any section, subsection, sentence or part of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

611 Repeal

Any ordinance regulating the harvesting or conservation of shellfish in the Town and any provisions of any other Town Ordinance, which is inconsistent with this Ordinance, is hereby repealed.

***Adopted at June 16, 1998 Special Town Meeting - Article 3.
Amended and Adopted at April 7, 2001, Annual Town Meeting,
Article 4
Amended and Adopted at April 7, 2003, Annual Town Meeting,
Article 11**

**Amended and Adopted at November 2, 2004, Special Town Meeting,
Article 2 – Question 2**

**Amended at Board of Selectmen Meeting held October 18, 2005 (90-
Day Emergency Ordinance effective November 6, 2005)**